



MULTISTATE TAX COMMISSION

## REPORT

**Uniformity Committee Meeting  
Radisson Hotel Salt Lake City Downtown  
215 W. South Temple  
Salt Lake City, Utah**

***March 2, 2016  
8:30am - 5:00pm Mountain Time***

**1-719-457-1414  
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This report is also available on the MTC website at [mtc.gov](http://mtc.gov). Follow the links to the meeting event.

To: MTC Uniformity Committee  
From: Sheldon H. Laskin, MTC Counsel  
Date: February 26, 2016  
Subject: Review of MTC Special Industry Regulations  
in Light of Proposed Changes to Regs.IV.1 and .17.

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The purpose of this memo is to summarize those portions of the special industry regulations that may require minor conforming changes in view of the proposed changes to Sections 1 and 17. Nothing in this memo is intended to suggest either the need for, or the lack thereof, of any substantive revisions to the special industry regulations. Attached to this memo are copies of the special industry regulations with some but not all of these changes marked in redline.

### **Reg. IV.18 (d). Special Regulation: Construction Contractors**

1. All references to "business income" should be changed to "apportionable income." All references to "nonbusiness income" should be changed to "nonapportionable income."
2. All references to the "sales apportionment factor" should be changed to the "receipts apportionment factor."

3. All references to the three-factor formula should be dropped. Similarly, the apportionment of business (sic) income as defined in 18(d)(4) and the apportionment percentage as defined in 18(d)(4)(vii) are predicated on the UDITPA three-factor formula. The general apportionment regulations now recommend a double-weighted sales factor. Should we do the same in the special regulations and use that formula to illustrate the examples?
4. Is the use of the term gross receipts in 18(d)(4)(vi)(A) correct? In the general regulations, the term “gross receipts” refers to the taxpayer’s “gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction which produces apportionable income in which the income or loss is recognized under the Internal Revenue Code.” Reg. IV.2.(a)(5). Essentially, these are the taxpayer’s receipts on a pre-apportioned basis. The term “receipts” “means all gross receipts of the taxpayer that are not allocated under paragraphs of Article IV, and that are received from transactions and activity in the regular course of the taxpayer’s trade or business.” Reg. IV.2.(a)(6). Essentially, these are the taxpayer’s apportionable receipts. The use of the term “gross receipts” in 18(d)(4)(vii) (A) appears to be correct because the regulation sets forth the rules to determine whether the receipts from construction contracts will be attributable to the state. In other words, the rules are used to determine whether those receipts are apportionable, rather than to determine the treatment of receipts that have already been determined to be apportionable.

**Reg. IV.18.(e). Special Rules: Airlines**

1. All references to “business income” should be changed to “apportionable income.”
2. All references to the “sales factor” should be changed to “receipts factor.” However, the regulation also parenthetically refers to the “transportation revenue factor.” Is that a term of art that should be retained in this regulation?
3. All references to the three-factor formula should be dropped.
4. The examples at the end of the regulation are all based on the equally weighted UDITPA apportionment formula. That should be dropped. Should we include examples based on a double-weighted sales factor to be consistent with the apportionment formula recommendation in the general regulations?

**Reg. IV.18.(f). Special Rules: Railroads**

1. All references to “business income” should be changed to “apportionable income.” All references to “nonbusiness income” should be changed to “nonapportionable income.”
2. All references to the “sales factor” should be changed to “receipts factor.” However, the regulation also parenthetically refers to the “revenue factor.” Is that a term of art that should be retained in this regulation? Please note that Reg. 18.(f) (3)(iv)A refers to revenue derived from transactions and activities in the regular course of the taxpayer’s

trade or business. It does not refer to receipts or to sales. It is only the title of (f).(3)(iv) that uses the term “sales (revenue) factor.” Further note that Reg. 18.(f) (3)(iv)C does refer to receipts from the transportation of passengers within the state. Is there some significance to the use of the term “revenue” in the first instance and “receipts” in the latter?

3. All references to the three-factor formula should be dropped.
4. There is a cross-reference in 18.(f)(3)(i) to Reg. IV.14 – 17. Much of former Reg. IV.15 (a) has been moved to IV.2 (a)(6). Should the cross-reference be amended to refer to 2(a)(6) in addition to 14 – 17?

#### **Reg. IV. 18.(g). Special Rules: Trucking Companies**

1. All references to “business income” should be changed to “apportionable income.” All references to “nonbusiness income” should be changed to “nonapportionable income.”
2. Again, there is a cross-reference in IV.18.(g)(3)(i) to Reg. 15, most of the contents of which have been moved to IV.2 (a)(6). Should the cross-reference be amended to refer to 2(a)(6) in addition to 14-17?
3. All references to the three-factor formula should be dropped.
4. All references to the “sales factor” should be changed to “receipts factor.” However, the regulation also parenthetically refers to the “revenue factor.” Is that a term of art that should be retained in this regulation? Note that Reg.IV.18 (g) (3)(iv)A refers to revenue derived from transactions and activities in the regular course of the taxpayer’s trade or business. It does not refer to receipts or to sales. But Reg. Reg.IV.18(g) (3)(iv)B refers to receipts from shipments of freight, mail and express. Is there a material difference between the two?

#### **Reg. IV.18.(i). Special Rules: Telecommunications and ancillary service providers**

1. All references to the “sales factor” should be changed to “receipts factor.”
2. The use of “gross receipts” in Reg. IV.18.(i)(3)(ii) appears to be appropriate. Again, the regulation sets forth the rules to determine whether the receipts from sales of telecommunications and ancillary services will be attributable to the state. In other words, the rules are used to determine whether those receipts are apportionable, rather than to determine the treatment of receipts that have already been determined to be apportionable.

#### **Reg. IV.18.(j). Special Rules: Publishing**

1. All references to “business income” should be changed to “apportionable income.”
2. All references to the “sales factor” should be changed to “receipts factor.”
3. All references to the three-factor formula should be dropped.

4. The use of the term “gross receipts” in this regulation is not always consistent with how the term is defined in the general regulations. Here are the references, in bold:

The numerator of the sales factor shall include all **gross receipts** of the taxpayer from sources within this state, including, but not limited to, the following:

1. **Gross receipts** derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.
2. Except as provided in subparagraph (3)(iii)B.3., **gross receipts** derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period.

Reg. IV.18.(j)(3)(iii)B.

The first and second references do not appear to be consistent with the use of the term “gross receipts” in the general regulations. It would seem the term “receipts” would be more appropriate in both cases, because the receipts described are apportionable to the state. But the use of the term “gross receipts” in relation to advertising and customer lists does appear to be appropriate, because the reference is to preapportioned receipts. The circulation factor is then used to determine what proportion of the gross receipts are apportionable receipts. This provision may require redrafting, because it may be confusing to start out with a reference to “receipts” in general and then vary the terminology in reference to receipts from advertising and customer lists.

5. Are the rules for sourcing advertising receipts consistent with the rules under Sec. 17 – or are they more specific – and so should be retained? See the following provisions:

2. Except as provided in subparagraph (3)(iii)B.3., gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor shall be determined for each individual publication by the taxpayer of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere.

The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

3. When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the [Tax Administrator] may require, that a portion of such receipts be attributed to the [sales factor receipts](#)

factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by subparagraph (3)(iii)B.2. Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

4. In the event that the purchaser or subscriber is the United States Government or that the taxpayer is not taxable in a State, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the ~~sales factor~~receipts factor for such State, shall be included in the numerator of the ~~sales factor~~receipts factor of this State if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this State.

#### **Reg. IV.18 (h). Special Rules: Television and Radio Broadcasting.**

1. All references to "business income" should be changed to "apportionable income." All references to "nonbusiness income" should be changed to "nonapportionable income."
2. All references to the "sales factor" should be changed to "receipts factor."
3. All references to the three-factor formula should be dropped.
4. The use of the term "gross receipts" in this regulation is not always consistent with how the term is defined in the general regulations. Here are the references, in bold:

The numerator of the sales factor shall include all **gross receipts** of the taxpayer from sources within this state, including, but not limited to the following:

1. **Gross receipts**, including advertising revenue, from television film or radio programming in release to or by television and radio stations located in this state.
2. **Gross receipts**, including advertising revenue, from television film or radio programming in release to or by a television station (independent or unaffiliated) or network of stations for broadcast shall be attributed to this state in the ratio (hereafter "audience factor") that the audience for such station (or owned and affiliated stations in the case of networks) located in this state bears to the total audience for such station (or owned and affiliated stations in the case of networks).

Again, the first two references to "gross receipts" are more appropriately referred to as "receipts" under the general regulations because these receipts are apportionable to the state. But the final category of receipts requires an attribution based on audience share and is therefore more accurately described as pre-apportionment "gross receipts."

5. Are the rules for sourcing advertising receipts consistent with the rules under Sec. 17 – or are they more specific – and so should be retained? See the following provisions:

2. Gross receipts, including advertising revenue, from television film or radio programming in release to or by a television station (independent or unaffiliated) or network of stations for broadcast shall be attributed to this state in the ratio (hereafter "audience factor") that the audience for such station (or owned and affiliated stations in the case of networks) located in this state bears to the total audience for such station (or owned and affiliated stations in the case of networks).

The audience factor for television or radio programming shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total viewing (listening) audience. Such audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics, provided the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer's activity in the state.

3. Gross receipts from film programming in release to or by a cable television system shall be attributed to this state in the ratio (hereafter "audience factor") that the subscribers for such cable television system located in this state bears to the total subscribers of such cable television system. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, such audience factor ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided that the source selected is consistently used from year to year for that purpose.

••• **Reg.IV.18.(d). Special Regulation: Construction Contractors.**

[Adopted July 10,  
1980]

The following special rules are established in respect to the apportionment of income of long-term construction contractors:

**(1) In General.** When a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contracts (construction contracts covering a period in excess of one year from the date of execution of the contract to the date on which the contract is finally completed and accepted), and has income from sources both within and without this state from a trade or business, the amount of ~~business income~~apportionable income derived from such long-term contracts from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine which portion of the taxpayer's income constitutes "~~business income~~apportionable income" and which portion constitutes "non~~business income~~apportionable income" under Article IV.1 and Reg. IV.1 thereunder. Non~~business income~~apportionable income is directly allocated to specific states pursuant to the provisions of Article IV.5 to .8, inclusive. ~~Business income~~Apportionable income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and ~~sales receipts~~apportionment factors set forth in this regulation. The sum of (1) the items of non~~business income~~apportionable income directly allocated to this state and (2) the amount of ~~business income~~apportionable income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

**(2) ~~Business~~Apportionable and Non~~business Income~~apportionable income.** For definitions, rules and examples for determining ~~business~~apportionable and non~~business income~~apportionable income, see Reg. IV.1.

**(3) Methods of Accounting and Year of Inclusion.** For general rules of accounting, definitions and methods of accounting for long-term construction contracts see [each state adopting this Regulation should insert here reference to its laws and regulations relating in general to accounting methods of reporting income from long-term contracts. This Regulation assumes that the law of the adopting states permits the taxpayer to elect either the percentage of completion or completed contract method. If not, the Regulation will have to be modified to conform to an adopting state's accounting method for long-term construction contracts.]

**(4) Apportionment of ~~Business Income~~Apportionable income.**

**(i) In General.** ~~Business income~~Apportionable income is apportioned to this state by a three-factor formula consisting of property, payroll and ~~sales receipts~~regardless of the method of accounting for long-term contracts elected by the taxpayer. The total of the property, payroll and ~~sales receipts~~percentages is divided by three to determine the

apportionment percentage. The apportionment percentage is then applied to ~~business income~~apportionable income to determine the amount apportioned to this state.

**(ii) Percentage of Completion Method.** Under this method of accounting for long-term contracts, the amount to be included each year as ~~business income~~apportionable income from each contract is the amount by which the gross contract price which corresponds to the percentage of the entire contract which has been completed during the income year exceeds all expenditures made during the income year in connection with the contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

*Example:* A taxpayer using the percentage of completion method of accounting for long-term contracts, entered into a long-term contract to build a structure for \$9,000,000. The contract allowed three years for completion and, as of the end of the second income year, the taxpayer's books of account, kept on the accrual method, disclosed the following:

	<u>Receipts</u>	<u>Expenditures</u>
End of 1st income year	\$2,500,000	\$2,400,000
End of 2nd income year	<u>4,500,000</u>	<u>4,100,000</u>
Totals	\$7,000,000	\$6,500,000

In computing the above expenditures, consideration was given to material and supplies on hand at the beginning and end of each income year. It was estimated that the contract was 30% completed at the end of the first income year and 80% completed at the end of the second income year. The amount to be included as ~~business income~~apportionable income for the first income year is \$300,000 (30% of \$9,000,000 or \$2,700,000 less expenditures of \$2,400,000 equals \$300,000). The amount to be included as ~~business income~~apportionable income for the second income year is \$400,000 (50% of \$9,000,000 or \$4,500,000 less expenditures of \$4,100,000 equals \$400,000).

**(iii) Completed Contract Method.** Under this method of accounting ~~business income~~apportionable income derived from long-term contracts is reported for the income year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of ~~business income~~apportionable income attributable to this state from each completed contract (see subdivision (5) of this



regulation). Thus, all receipts and expenditures applicable to such contracts whether complete or incomplete as of the end of the income year are excluded from business income apportionable income derived from other sources, as for example, short-term contracts, interest, rents, royalties, etc., which is apportioned by the regular three-factor formula of property, payroll and sales receipts.

**(iv) Property Factor.** In general the numerator and denominator of the property factor shall be determined as set forth in Article IV.10 to .12, inclusive, and Reg. IV.10 to .12, inclusive. However, the following special rules are also applicable:

(A) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent that such costs exceed progress billings (accrued or received, depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts) shall be included in the denominator of the property factor. The value of any such construction costs attributable to construction projects in this state shall be included in the numerator of the property factor.

*Example 1:* Taxpayer commenced a long-term construction project in this state as of the beginning of a given year. By the end of its second year, its equity in the costs of production to be reflected in the numerator and denominator of its property factor for such year is computed as follows:

	<b>1st Year</b>		<b>2nd Year</b>	
	Beginning	Ending	Beginning	Ending
Construction Costs	0	\$1,000,000		
Progress billings		600,000		
Balance 12/31-(1/1)		<u>\$400,000</u>	<u>\$400,000</u>	
Construction Costs - Total from beginning of project				\$5,000,000
Progress billings - Total from beginning of project				<u>4,000,000</u>
Balance 12/31				1,000,000
Balance beginning of year				<u>400,000</u>

Total \$1,400,000

Average (1/2) - Value  
used in property  
factor \$700,000

Note: It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity; see Article IV.12 and Reg. IV.12.

*Example 2:* Same facts as in Example 1, except that progress billings exceeded construction costs. No value for the taxpayer's equity in the construction project is shown in the property factor.

(B) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate even though such rental expense may be capitalized into the cost of construction.

(C) The property factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, ~~business—income~~apportionable income is computed separately (see paragraph (5) below).

**(v) Payroll Factor.** In general the numerator and denominator of the payroll factor shall be determined as set forth in Article IV.13 and .14 and Reg. IV.13 and .14. However, the following special rules are also applicable:

(A) Compensation paid employees which is attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(B) Compensation paid employees who in the aggregate perform most of their services in a state to which their employer does not report them for unemployment tax purposes, shall nevertheless be attributed to the state in which the services are performed.

*Example:* A taxpayer engaged in a long-term contract in state X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes, reports these employees to state Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Article IV.14 and Reg. IV.14 thereunder, the compensation is assigned to the numerator of state X.

(C) The payroll factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though, under

the completed contract method of accounting, ~~business income~~apportionable income is computed separately (see paragraph (5) below).

(vi) ~~Sales Factor~~Receipts factor. In general, the numerator and denominator of the ~~sales factor~~receipts factor shall be determined as set forth in Article IV.15-.17, inclusive, and Reg. IV.15-.17, inclusive. However, the following special rules are also applicable:

(A) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the income year bear to the total of construction costs for the entire project during the income year, or upon any other method, such as engineering cost estimates, which will provide a reasonable apportionment.

*Example 1:* A construction project was undertaken in this state by a calendar year taxpayer which had elected one of the long-term contract methods of accounting. The following gross receipts (progress billings) were derived from the contract during the three income years that the contract was in progress.

	<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>
Gross receipts	\$1,000,000	\$4,000,000	\$3,000,000

The gross receipts to be reflected in both the numerator and denominator of the ~~sales factor~~receipts factor for each of the three years are the amounts shown.

*Example 2:* A taxpayer contracts to build a dam on a river at a point which lies half within this state and half within state X. During the taxpayer's first income year, construction costs in this state were \$2,000,000. Total construction costs for the project during the income year were \$3,000,000. Gross receipts (progress billings) for the year were \$2,400,000. Accordingly, gross receipts of \$1,600,000 ( $\$2,000,000/\$3,000,000 \times \$2,400,000$ ) are included in the numerator of the ~~sales factor~~receipts factor.

(B) If the percentage of completion method is used, the ~~sales factor~~receipts factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year.

*Example:* A taxpayer which had elected the percentage of completion method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project), it estimated that the project was 30% completed. The bid price for the project was \$9,000,000 and it had received \$2,500,000 from progress billings as of the end of its current income year. The amount of gross receipts to be included in the ~~sales factor~~receipts factor for the current income year is \$2,700,000 (30% of \$9,000,000), regardless of whether the taxpayer

uses the accrual method or the cash method of accounting for receipts and disbursements.

(C) If the completed contract method of accounting is used, the ~~sales-factor~~receipts factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the income year attributable to each contract.

*Example 1:* A taxpayer which had elected the completed contract method of accounting entered into a long-term construction contract. By the end of its current income year (the second since starting the project), it had billed and had accrued on its books a total of \$5,000,000 of which \$2,000,000 had accrued in the first year in which the contract was undertaken and \$3,000,000 had accrued in the current (second) year. The amount of gross receipts to be included in the ~~sales-factor~~receipts factor for the current income year is \$3,000,000.

*Example 2:* Same facts as in Example 1 except that the taxpayer keeps its books on the cash basis and, as of the end of its current income year, had received only \$2,500,000 of the \$3,000,000 billed during the current year. The amount of gross receipts to be included in the ~~sales-factor~~receipts factor for the current income year is \$2,500,000.

(D) The ~~sales-factor~~receipts factor, except as noted above in subparagraphs (B) and (C), is computed in the same manner, regardless of which long-term method of accounting the taxpayer has elected, and is computed for each income year even though, under the completed contract method of accounting, ~~business-income~~apportionable income is computed separately.

**(vii) Apportionment Percentage.** The total of the property, payroll and ~~sales-receipts~~ percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to ~~business-income~~apportionable income to establish the amount apportioned to this state.

**(5) Completed Contract Method - Special Computation.** The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year in which the construction project is completed or accepted. Accordingly, a separate computation is made for each such contract completed during the income year, regardless of whether the project is located within or without this state, in order to determine the amount of income which is attributable to sources within this state. The amount of income from each contract completed during the income year apportioned to this state, plus other ~~business-income~~apportionable income apportioned to this state by the regular three-factor formula such as interest income, rents, royalties, income from short-term contracts, etc., plus all non~~business-income~~apportionable income allocated to this state is the measure of tax for the income year.

The amount of income (or loss) from each contract which is derived from sources within this state using the completed contract method of accounting is computed as follows:

(i) In the income year in which the contract is completed, the income (or loss) therefrom is determined.

(ii) The income (or loss) determined at (i) above is apportioned to this state by the following method:

(A) A fraction is determined for each year during which the contract was in progress. The numerator is the amount of construction costs paid or accrued in each year during which the contract was in progress and the denominator is the total of all such construction costs for the project.

(B) Each percentage determined in (A) is multiplied by the apportionment formula percentage for that particular year as determined in subparagraph (4)(vii) of this regulation above.

(C) The percentages determined at (B) for each year during which the contract was in progress are totaled. The amount of total income (or loss) from the contract determined at subparagraph (5)(i) of this regulation is multiplied by the total percentage. The resulting income (or loss) is the amount of ~~business income~~apportionable income from such contract derived from sources within this state.

*Example 1:* A taxpayer using the completed contract method of accounting for long-term contracts is engaged in three long-term contracts; Contract L in this state, Contract M in state X and Contract N in state Y. In addition, it has other ~~business—apportionable~~ income (less expenses) during the income year 1972 from interest, rents and short-term contracts amounting to \$500,000, and non~~business income~~apportionable income allocable to this state of \$8,000. During 1972, it completed Contract M in state X at a profit of \$900,000. Contracts L and N in this state and state Y, respectively, were not completed during the income year. The apportionment percentages of the taxpayer as determined in subparagraph (4)(vii) of this regulation and the percentages of contract costs as determined in subparagraph (5)(ii) above for each year during which Contract M in state X was in progress are as follows:

	<u>1970</u>	<u>1971</u>	<u>1972</u>
Apportionment %	30%	20%	40%
% of Construction Costs of Contract M each year to total construction costs - (100%)	20%	50%	30%

The corporation's net income subject to tax in this state for 1972 is computed as follows:

<del>Business Income</del> <u>Apportionable income</u>	<u>\$500,000</u>
Apportion 40% to this state	\$200,000
Add: Income from Contract M*	<u>\$252,000</u>
Total <del>business income</del> <u>apportionable income</u> derived from sources within this state	452,000
Add: Non <del>business income</del> <u>apportionable income</u> allocated to this state	<u>8,000</u>
Net income subject to tax	<u>\$460,000</u>

\*Income from Contract M apportioned to this state:

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>Total</u>
Apportionment %	30%	20%	40%	
% of Construction Costs	<u>20%</u>	<u>50%</u>	<u>30%</u>	<u>100%</u>
Product	<u>6%</u>	<u>10%</u>	<u>12%</u>	<u>28%</u>

$$28\% \text{ of } \$900,000 = \$252,000$$

*Example 2:* Same facts as in Example 1 except that Contract L was started in 1972 in this state, the first year in which the taxpayer was subject to tax in this state. Contract L in this state and Contract N in state Y are incomplete in 1972.

The corporation's net income subject to tax in this state for 1972 is computed as follows:

<del>Business Income</del> <u>Apportionable income</u>	<u>\$500,000</u>
Apportion 40% to this state	\$200,000
Add: Income from Contract M*	<u>108,000</u>
Total <del>business income</del> <u>apportionable income</u> derived from sources within this state	\$308,000
Add: Non <del>business income</del> <u>apportionable income</u> allocated to this state	<u>8,000</u>
Net income subject to tax	<u>\$316,000</u>

\*Income from Contract M apportioned to this state:

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>Total</u>
Apportionment %	0	0	40%	

% of Construction Costs	<u>20%</u>	<u>50%</u>	<u>30%</u>	<u>100%</u>
Product	<u>0</u>	<u>0</u>	<u>12%</u>	<u>12%</u>

$$12\% \text{ of } \$900,000 = \$108,000$$

*Note:* Only 12% is used to determine the income derived from sources within this state since the corporation was not subject to tax in this state prior to 1972.

*Example 3:* Same facts as in example 1 except that the figures relate to Contract L in this state and 1972 is the first year the corporation was taxable in another state (see Article IV.2 and .3 and Reg. IV.2(b)(1) and .3. Contracts M and N in states X and Y were started in 1972 and are incomplete.

The corporation's net income subject to tax in this state for 1972 is computed as

follows:

<del>Business Income</del> Apportionable income	<u>\$500,000</u>
Apportion 40% to this state	\$200,000
Add: Income from Contract L*	<u>738,000</u>
Total <del>business income</del> apportionable income derived from sources within this state	\$938,000
Add: Non <del>business income</del> apportionable income allocated to this state	<u>8,000</u>
Net income subject to tax	<u>\$946,000</u>

\*Income from Contract L apportioned to this state:

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>Total</u>
Apportionment %	100%	100%	40%	
% of Construction Costs	<u>20%</u>	<u>50%</u>	<u>30%</u>	<u>100%</u>
Product	<u>20%</u>	<u>50%</u>	<u>12%</u>	<u>82%</u>

$$82\% \text{ of } \$900,000 = \$738,000$$

**(6) Computation for Year of Withdrawal, Dissolution or Cessation of Business - Completed Contract Method.** Use of the completed contract method of accounting for long-term contracts requires that income derived from sources within this state from incomplete contracts in progress outside this state on the date of withdrawal, dissolution or cessation of business in this state be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state.

The amount of income (or loss) from each such contract to be apportioned to this state by the apportionment method set forth in subparagraph (5)(ii) of this regulation shall be determined as if the percentage of completion method of accounting were used for all such contracts on the date of withdrawal, dissolution or cessation of business. The amount of ~~business income~~apportionable income (or loss) for each such contract shall be the amount by which the gross contract price from each such contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution or cessation of business exceeds all expenditures made during such period in connection with each such contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

*Example:* A construction contractor qualified to do business in this state had elected the completed contract method of accounting for long-term contracts. It was engaged in two long-term contracts. Contract L in this state was started in 1971 and completed at a profit of \$900,000 on 12/16/73. The taxpayer withdrew on 12/31/73. Contract M in state X was started in 1972 and was incomplete on 12/31/73. The apportionment percentages of the taxpayer, as determined at subdivision (4) of this regulation, and percentages of construction costs, as determined in subparagraph (5)(ii) of this regulation, for each year during which Contract M in state X was in progress are as follows:

	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>Total</u>
Apportionment %	30%	20%	40%	
% of Construction Costs:				
Contract L, this state	20%	50%	30%	100%
Contract M, state X	0	10%	25%	35%

The corporation had other ~~business income~~apportionable income (net of expenses) of \$500,000 during 1972 and \$300,000 during 1973. The gross contract price of Contract M (state X) was \$1,000,000, and it was estimated to be 35% completed on 12/31/73. Total expenditures to date for Contract M (state X) were \$300,000 for the period ended 12/31/73.

The measure of tax for the taxable year ended 12/31/73 is computed as follows:



Taxable Year 1973

	<u>Income Year 1972</u>	<u>Income Year 1973</u>
<del>Business</del> <del>Income</del> <u>Apportionable income</u>	<u>\$500,000</u>	<u>\$300,000</u>
Apportionment % to this state	<u>20%</u>	<u>40%</u>
Amount Apportioned to this state	\$100,000	\$120,000
Add: Income from contracts:		
L* (this state)		\$252,000
M** (state X)		<u>6,000</u>
Total <del>business</del> <del>income</del> <u>apportionable income</u> derived from sources within this state	<u>\$100,000</u>	<u>\$378,000</u>

\*Income from Contract L apportioned to this state:

	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>Total</u>
Apportionment %	30%	20%	40%	
% of Construction Costs	<u>20%</u>	<u>50%</u>	<u>30%</u>	<u>100%</u>
Product	<u>6%</u>	<u>10%</u>	<u>12%</u>	<u>28%</u>

28% of \$900,000=\$252,000

\*\*Income from Contract M apportioned to this state:

	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>Total</u>
Apportionment %	0	20%	40%	
% of Construction Costs	<u>0</u>	<u>10%</u>	<u>25%</u>	<u>35%</u>
Product	<u>0</u>	<u>2%</u>	<u>10%</u>	<u>12%</u>

12% of 50,000\*\*\*=\$6,000

\*\*\*Computation of ~~apportionable~~apportionable income ~~income~~ from  
Contract M based on percentage of completion method:

Total Contract Price	\$1,000,000
Estimated to be 35% completed	\$350,000
Less: total expenditures to date	<u>300,000</u>
<del>Apportionable</del> <u>Apportionable income</u>	<u>\$50,000</u>

••• **Reg. IV.18.(e). Special Rules: Airlines.** [Adopted July 14,

1983] The following special rules are established with respect to

airlines:

(1) **In General.** Where an airline has income from sources both within and without this state, the amount of ~~business income~~apportionable income from sources within this state shall be determined pursuant to Article IV. of the Multistate Tax Compact except as modified by this regulation.

(2) **Apportionment of ~~Business~~**

~~Income~~Apportionable income. (i)

**General Definitions.**

The following definitions are applicable to the terms used in the apportionment factor descriptions.

A. "Value" of owned real and tangible personal property shall mean its original cost. (See Article IV.11. and Regulation IV.11(a).)

B. "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.

C. "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it shall be assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property. (See Regulation IV.11(a).)

D. "Average value" of the property means the amount determined by averaging the values at the beginning and ending of the income year, but the [insert here the appropriate title of the administrative agency] may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property. (See Article IV.12. and Regulation IV.12.)

E. The "value" of rented real and tangible personal property means the product of eight  
(8) times the net annual rental rate. (See Article IV.11. and Regulation IV.11(b).)

F. "Net annual rental rate" means the annual rental rate paid by the taxpayer.

G. "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

H. "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

I. "Revenue service" means the use of aircraft ready for flight for the production of revenue.

J. "Transportation revenue" means revenue earned by transporting passengers, freight and mail as well as revenue earned from liquor sales, pet crate rentals, etc.

K. "Departures" means, for purposes of these regulations, all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.

## **(ii) Property Factor**

**A. Property valuation.** Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight (8) times the net annual rental rate in accordance with Article IV.11. and Regulation IV.11. The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier will not constitute a rental of such aircraft by the airlines to the other participating airline. Such aircraft shall be accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, will be valued at cost.

**B. The denominator and numerator of the property factor.** The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

In determining the numerator of the property factor, all property except aircraft ready for flight shall be included in the numerator of the property factor in accordance with Article IV.10.-.12, inclusive. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as follows:

Departures of aircraft from locations in this state weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

## **(iii) The Payroll Factor**

The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. (See Article IV.13.-.14.) The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to non-flight personnel, compensation paid to such employees shall be included in the numerator as provided in Article IV.13-.14. With respect to flight personnel (the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air), compensation paid to such employees shall be

included in the ratio of departures of aircraft from locations in this state, weighted as to the cost and value of aircraft by type compared to total departures similarly weighted, multiplied by the total flight personnel compensation.

| (iv) Sales Receipts (Transportation Revenue) Factor.

The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the revenue factor. (See Article IV.1. and Regulation IV.1.) Passive income items such as interest, rental income, dividends, etc., will not be included in the denominator nor will the proceeds or net gains or losses from the sale of aircraft be included. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year is the result of the following calculation:

The ratio of departures of aircraft in this state weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any non-flight revenues directly attributable to this state.

**(3) Records.** The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these regulations. Such records are to be subject to review by the respective state taxing authorities or their agents.

# **EXAMPLES OF THE MANNER IN WHICH THE MULTISTATE TAX COMMISSION AIRLINE REGULATION WOULD APPLY TO SPECIFIC FACT SITUATIONS**

*Example 1:* Assume the following facts for an airline for a tax year:

1. It has ten 747s ready for flight and in revenue service at an average cost per unit of \$40,000,000 for nine of the aircraft. It rents the tenth 747 from another airline for \$9,000,000 per year. At eight times rents, the latter is valued at \$72,000,000 for apportionment purposes. The total 747 valuation is, therefore, \$432,000,000 for property factor denominator purposes.

2. It has twenty 727s ready for flight in revenue service at an average cost per unit of \$20,000,000. The total 727 valuation is, therefore, \$400,000,000 for property factor denominator purposes.

3. It has nonflight tangible property (n.t.p.) valued at an original cost of \$200,000,000.

4. It has the following annual payroll:

Flight personnel	\$60,000,000
Nonflight personnel	<u>40,000,000</u>
Total	\$100,000,000

5. From its operations, it has total receipts of \$50,000,000, business net income of \$1,000,000, and no nonbusiness income apportionable income.

6. It has the following within state X:

a. 10% of its 747 flight departures (.10 x \$432,000,000)	\$43,200,000
b. 20% of its 727 flight departures (.20 x \$400,000,000)	\$80,000,000
c. 5% of its n.t.p. (.05 x \$200,000,000)	\$10,000,000
d. 15% of its n.p. payroll (.15x\$40,000,000)	\$6,000,000

7. State X has a corporate tax rate of 10%.

The airline's tax liability to state X would be determined as follows:

## **Property Factor:**

$$\frac{43,200,000 \text{ (747s)} + 80,000,000 \text{ (727s)} + 10,000,000 \text{ (n.t.p.)}}{432,000,000 + 400,000,000 + 200,000,000} = \frac{133,200,000}{1,032,000,000} = .1291$$

**Sales Factor****Receipts factor:**

$$\frac{43,200,000 (747s) + 80,000,000 (727s)}{432,000,000 + 400,000,000} = \frac{123,200,000}{832,000,000} = .1481$$

**Payroll Factor:**

$$\frac{6,000,000(n.p.) + 8,880,000(.148 \times 60,000,000)(flight)}{100,000,000} = \frac{14,880,000}{100,000,000} = .1488$$

Average ratio:  $(.1291 + .1481 + .1488)/3 = .4260/3 = .1420$

Taxable Income in State X:  $.1420 \times \$1,000,000 = \$142,000$

Tax Liability to State X:  $.10 \times \$142,000 = \$14,200$

*Example 2:* Same facts except that paragraphs 6 and 7 are changed to read:

6. It has the following within state Y:

a. 6% of its 747 flight departures (.6 x \$432,000,000)	\$25,920,000
b. 31% of its 727 flight departures (.31 x \$400,000,000)	\$124,000,000
c. 3% of its n.t.p. (.03 x \$200,000,000)	\$6,000,000
d. 7% of its n.p. payroll (.07 x \$40,000,000)	\$2,800,000

7. State Y has a corporate tax rate of 6.5%.

The airline's tax liability to state Y would be determined as follows:

**Property Factor:**

$$\frac{25,920,000 (747s) + 124,000,000 (727s) + 6,000,000 (n.t.p.)}{432,000,000 + 400,000,000 + 200,000,000} = \frac{155,920,000}{1,032,000,000} = .1511$$

**Sales Factor****Receipts factor:**

$$\frac{25,920,000 (747s) + 124,000,000 (727s)}{432,000,000 + 400,000,000} = \frac{149,920,000}{832,000,000} = .1802$$

**Payroll Factor:**

$$\frac{2,800,000(\text{n.p.}) + 10,812,000(.1802 \times 60,000,000)(\text{flight})}{40,000,000 + 60,000,000} = \frac{13,612,000}{100,000,000} = .1361$$

Average ratio:  $(.1511 + .1802 + .1361)/3 = .4674/3 = .1558$

Taxable Income in State Y:  $.1558 \times \$1,000,000 = \$155,800$

Tax Liability to State Y:  $.65 \times \$155,800 = \$10,127$



••• **Reg. IV.18.(f). Special Rules: Railroads.** [Adopted July 16,

1981] The following special rules are established in respect to

railroads:

(1) **In General.** Where a railroad has income from sources both within and without this state, the amount of ~~business income~~apportionable income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the railroad's income constitutes "~~business~~apportionable" income and which portion constitutes "~~nonbusiness~~nonapportionable" income under Article IV.1 and Regulation IV.1 thereunder. ~~Nonbusiness~~Nonapportionable income is directly allocable to specific states pursuant to the provisions of Article IV.5 to .8, inclusive. ~~Business income~~Apportionable income is apportioned among the states in which the business is conducted pursuant to the property, payroll and ~~sales~~receipts apportionment factors set forth in this regulation. The sum of (1) the items of ~~nonbusiness~~nonapportionable income directly allocated to this state and (2) the amount of ~~business income~~apportionable income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

(2) ~~Business~~Apportionable and ~~Nonbusiness~~Income~~apportionable income~~. For definitions, rules and examples for determining business and ~~nonbusiness~~nonapportionable income, see Reg. IV.1.

(3) **Apportionment of ~~Business Income~~Apportionable income.**

(i) **In General.** The property factor shall be determined in accordance with Reg. IV.10.-.12., inclusive, the payroll factor in accordance with Reg. IV.13., and the ~~sales factor~~receipts factor in accordance with Reg. IV.14.-.17, inclusive, except as modified in this regulation.

(ii) **The Property Factor.**

**A. Property Valuation.** Owned property shall be valued at its original cost and property rented from others shall be valued at eight (8) times the net annual rental rate in accordance with Article IV.11. and Reg. IV.11. Railroad cars owned and operated by other railroads and temporarily used by the taxpayer in its business and for which a per diem or mileage charge is made are not included in the property factor as rented property. Railroad cars owned and operated by the taxpayer and temporarily used by other railroads in their business and for which a per diem charge is made by the taxpayer are included in the property factor of the taxpayer.

**B. General Definitions.** The following definitions are applicable to the numerator and denominator of the property factor:

1. "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions); or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the

property factor at its fair market value as of the date of acquisition by the taxpayer (Reg. IV.11.(a)).

2. "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

3. The "value" of owned real and tangible personal property shall mean its original cost. (See Article IV.11 and Reg. IV.11(a).)

4. "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income tax year, but the [insert here the appropriate title of the administrative agency] may require the averaging of monthly values during the income year or such averaging as necessary to effect properly the average value of the railroad's property. (See Article IV.12. and Reg. IV.12.)

5. The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (See Article IV.11. and Reg. IV.11(b).)

6. "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

7. "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

8. A "locomotive-mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one mile under its own power.

9. A "car-mile" is a movement of a unit of car equipment a distance of one mile.

**C. The Denominator and Numerator of the Property Factor.** The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the income year

shall be included in the numerator of the property factor in accordance with Article IV.10.-.12., inclusive, and Regulation IV.10.-.12, inclusive.

Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the income year shall be included in the numerator of the property factor in the ratio which "locomotive-miles" and "car-miles" in the state bear to the total everywhere.

**(iii) The Payroll Factor.** The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year for the production of ~~business income~~apportionable income. (See Article IV.13.-14. and Reg. IV.13.-.14.) The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to all personnel except enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator as provided in Article IV.13.-.14 and Reg. IV.13.-.14.

With respect to enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere. Compensation for services performed in this state should be deemed to be the compensation reported or required to be reported by such employees for determination of their income tax liability to this state.

**(iv) The ~~Sales (Revenue)~~Receipts Factor.**

**A. In General.** All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces ~~business income~~apportionable income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the revenue factor. (See Article IV.1. and Reg. IV.1.)

The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with Article IV.15.-.17. and Regulation IV.15.-.17.

**B. Numerator of ~~Sales (Revenue)~~Receipts Factor From Freight, Mail and Express.** The total revenue of the taxpayer in this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

1. All receipts from shipments which both originate and terminate within this state; and

2. That portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled by such movement or shipment in this state bear to the total miles traveled by such movement or shipment from point of origin to destination.

**C. Numerator of ~~Sales (Revenue)~~Receipts Factor from Passengers.** The numerator of the ~~sales~~receipts ~~(revenue)~~ factor shall include:

1. All receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within this state; and

2. That portion of the receipts from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in this state bear to the total everywhere.

••• Reg. IV.18.(g).      **Special Rules: Trucking Companies.**  
[Adopted July 11, 1986; amended July 27, 1989]

The following special rules are established with respect to trucking companies:

(1) **In General.** As used in this regulation, the term "trucking company" means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. Where a trucking company has income from sources both within and without this state, the amount of ~~business income~~apportionable income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the trucking company's income constitutes "~~business~~apportionable" income and what portion constitutes "~~nonbusiness~~nonapportionable" income under Article IV.1 of the Multistate Tax Compact and Regulation IV.1 thereunder. Non~~business income~~apportionable income is directly allocable to specific states pursuant to the provisions of Article IV.5 to .8, inclusive. ~~Business income~~Apportionable income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and ~~sales-receipts~~ apportionment factors set forth in this regulation. The sum of (i) the items of non~~business income~~apportionable income directly allocated to this state and (ii) the amount of ~~business income~~apportionable income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax in this state.

(2) ~~Business~~Apportionable and Non~~business~~Incomeapportionable income. For definitions, rules, and examples for determining apportionable business and non~~business income~~apportionable income, see Regulation IV.1.

(3) Apportionment of ~~Business Income~~Apportionable income

(i) **In General.** The property factor shall be determined in accordance with Regulation IV.10 to .12, inclusive, the payroll factor in accordance with Regulation IV.13 to .14, and the ~~sales factor~~receipts factor in accordance with Regulation IV.15 to .17, inclusive, except as modified by this regulation.

(ii) **The Property Factor**

**A. Property Valuation.** Owned property shall be valued at its original cost and property rented from others shall be valued at eight (8) times the net annual rental rate in accordance with Article IV.11 and Regulation IV.11.

**B. General Definitions.** The following definitions are applicable to the numerator and denominator of the property factor, as well as other apportionment factor descriptions:

1. "Average value" of property means the amount determined by averaging the values at the beginning and end of the income tax year, but the [insert here the title of the appropriate administrative agency] may require the averaging of monthly values during the income year or

such averaging as is necessary to reflect properly the average value of the trucking company's property. (See Article IV.12 and Regulation IV.12.)

2. "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

3. A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

4. "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. (Regulation IV.11.(a).)

5. "Property used during the course of the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

6. The "value" of owned real and tangible personal property means its original cost. (See Article IV.11 and Regulation IV.11.(a).)

7. The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (See Article IV.11 and Regulation IV.11.(b).)

**C. The Denominator and Numerator of the Property Factor.** The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year. In the determination of the numerator of the property factor, all property, except mobile property as defined in this regulation, shall be included in the numerator of the property factor in accordance with Article IV.10 to .12, inclusive, and Regulation IV.10 to .12, inclusive.

Mobile property, as defined in this regulation, which is located solely within this state during the income year shall be included in the numerator of the property factor.

Mobile property as defined in this regulation, which is located within and without this state during the income year shall be included in the numerator of the property factor in the ratio which mobile property miles in the state bear to the total mobile property miles.

**(iii) The Payroll Factor.** The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the income year for the production of

~~business income~~apportionable income. (See Article IV.13 and .14 and Regulation IV.13 and .14.) The numerator of the payroll factor is the total compensation paid in this state during the income year by the taxpayer. With respect to all personnel, except those performing services within and without this state, compensation paid to such employees shall be included in the numerator as provided in Article IV.13 and .14 and Regulation IV.13 and .14.

With respect to personnel performing services within and without this state, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere based on mobile property miles.

**(iv) The ~~Sales (Revenue)~~Receipts Factor**

**A. In General.** All ~~revenue receipts~~ derived from transactions and activities in the regular course of the taxpayer's trade or business which produce ~~business income~~apportionable income shall be included in the denominator of the ~~revenue receipts factor~~receipts factor. (See Article IV.1 and Regulation IV.1.)

The numerator of the ~~revenue factor~~receipts factor is the total ~~revenue receipts~~ of the taxpayer in this state during the income year. The total state ~~revenue receipts~~ of the taxpayer, other than ~~revenue receipts~~ from hauling freight, mail, and express, shall be attributable to this state in accordance with Article IV.15 through .17 and Regulation IV.15 through .17.

**B. Numerator of the ~~Sales (Revenue)~~Receipts Factor From Freight, Mail, and Express.** The total ~~revenue receipts~~ of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

1. Intrastate: All receipts from any shipment which both originates and terminates within this state; and,

2. Interstate: That portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio which the mobile property miles traveled by such movements or shipments in this state bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.

**(4) Records.** The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by such mobile property as those terms are used in this regulation. Such records are subject to review by [insert here the title of the appropriate administrative agency] or its agents.

**(5) De Minimis Nexus Standard.** Notwithstanding any provision contained herein, this Regulation IV.18.(g) shall not apply to require the apportionment of income to this state if the trucking company during the course of the income tax year neither:

a. owns nor rents any real or personal property in this state, except mobile

property; nor b. makes any pick-ups or deliveries within this state; nor

c. travels more than twenty-five thousand mobile property miles within this state; provided that the total mobile property miles traveled within this state during the income tax year do not exceed three percent of the total mobile property miles traveled in all states by the trucking company during that period; nor

d. makes more than twelve trips into this state.



**•• Reg. IV.18.(i). Special Rules: Telecommunications and ancillary service providers.**  
[Adopted July 31, 2008]

The following special rules are established with respect to the apportionment of income from the sale of telecommunications and ancillary services by a person that is taxable both in this state and in one or more other states.

**(1)** In general. A person providing telecommunications or ancillary services whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in [Article IV of the Multistate Tax Compact or state equivalent] and regulations issued thereunder, exclusive of [Art.IV.2. of the Multistate Tax Compact or state equivalent], except as modified by this special rule.

**(2) Definitions.**

**(i)** “800 service” means a “telecommunications service” that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800”, “855”, “866”, “877”, and “888” toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

**(ii)** “900 service” means an inbound toll “telecommunications service” purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. “900 service” does not include collection services provided by the seller of the “telecommunications services” to the subscriber, or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service, and any subsequent numbers designated by the Federal Communications Commission.

**(iii)** “Air-to-Ground Radiotelephone service” means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

**(iv)** “Ancillary service” means services that are associated with or incidental to the provision of telecommunications services, including but not limited to the following subcategories: detailed telecommunications billing, directory assistance, vertical service, conference bridging service and voice mail services. The term “ancillary service” is defined as a broad range of services and is broader than the sum of the subcategories.

**(v)** “Bundled transaction” means the retail sale of two or more products where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price. For purposes of this special regulation, a “bundled transaction” does not include the sale of any products in which the “sales price” varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. A transaction that otherwise meets the definition of a “bundled

transaction” is not a “bundled transaction” if it is: (1) the “retail sale” of two products where the first product is essential to the use of the second product, and the first product is provided exclusively in connection with the second, and the true object of the transaction is the second; (2) the “retail sale” of more than one product, but the products are sourced the same under this special rule; or (3) the “retail sale” of more than one product, but the sum of the “purchase price” or “sales price” of products which are sourced differently under this special rule is de minimis.

**(vi)** “Call-by-call Basis” means any method of charging for telecommunications services where the price is measured by individual calls.

**(vii)** “Coin-operated telephone service” means a “telecommunications service” paid for by inserting money into a telephone accepting direct deposits of money to operate.

**(viii)** “Communications Channel” means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

**(ix)** “Conference bridging service” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

**(x)** “Customer” means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service. “Customer” does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

**(xi)** “Customer Channel Termination Point” means the location where the customer either inputs or receives the communications.

**(xii)** “Detailed telecommunications billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

**(xiii)** “Directory assistance” means an ancillary service of providing telephone number information, and/or address information.

**(xiv)** “End user” means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

(xv) “Fixed wireless service” means a telecommunications service that provides radio communication between fixed points.

(xvi) “Home service provider” means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(xvii) “International” means a “telecommunications service” that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

(xviii) “Interstate” means a “telecommunications service” that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

(xix) “Intrastate” means a “telecommunications service” that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

(xx) “Mobile telecommunications service” means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(xxi) “Mobile wireless service” means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(xxii) “Network access service” means the provision by a local exchange telecommunication service provider of the use of its local exchange network by an inter-exchange telecommunication service provider to originate or terminate the inter-exchange telecommunication service provider’s traffic carried to or from a distant exchange.

(xxiii) “Outerjurisdictional property” means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications or ancillary service business, but that are not physically located in any particular state.

(xxiv) “Paging service” means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

(xxv) “Pay telephone service” means a telecommunications service provided through any pay telephone.

(xxvi) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" shall be within the licensed service area of the home service provider.

(xxvii) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

(xxviii) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(xxix) "Prepaid wireless calling service" means the sale of a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

(xxx) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(xxxi) "Product" means tangible personal property, digital good or service.

(xxxii) "Service address" means:

A. The location of the customer's telecommunications equipment, to which the customer's call is charged, and from which the call originates or terminates, regardless of where the call is billed or paid.

B. If the location in subsection (A) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by

the seller from its service provider, where the system used to transport such signals is not that of the seller.

C. If the location in subsection (A) and subsection (B) are not known, the service address means the location of the customer's place of primary use.

**(xxxiii)** “Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

**A.** The term “telecommunication service” is defined as a broad range of services. The term includes, but is broader than the sum of, the following subcategories: 800 service, 900 service, fixed wireless service, mobile wireless service, paging service, prepaid calling service, prepaid wireless calling service, private communication service, value-added non-voice data service, coin-operated telephone service, international telecommunications service, interstate telecommunications service, intrastate telecommunications service, network access service and pay telephone service.

**B.** The term “telecommunications service” does not include:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser’s primary purpose for the underlying transaction is the processed data or information;
2. Installation or maintenance of wiring or equipment on a customer’s premises;
3. Tangible personal property;
4. Advertising, including but not limited to directory advertising.
5. Billing and collection services provided to third parties;
6. Internet access service;
7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC

522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

8. “Ancillary services”; or

9. Digital products “delivered electronically”, including but not limited to software, music, video, reading materials or ring tones.

### C. Examples of Included and Excluded Services.

Example 1. An entity provides dedicated network service to an entity which will resell that service as intrastate telecommunications service. Both entities are providing a telecommunications service.

Example 2. An entity provides an interstate telecommunications service to an internet service provider which will use that service in the provision of internet access service. The entity providing interstate telecommunications service is providing a telecommunications service. The entity providing internet access service is not providing a telecommunications service.

Example 3. An entity primarily engaged in the provision of cable television provides an interstate telecommunications service. The entity is engaged in the provision of telecommunications service.

**(xxxiv)** “Value-added non-voice data service” means a service that otherwise meets the definition of “telecommunications services” in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

**(xxxv)** “Vertical service” means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

**(xxxvi)** “Voice mail service” means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

### (3) Apportionment and Allocation

**(i)** Property Factor: Outerjurisdictional property that is used by a taxpayer in providing a telecommunications or ancillary service shall be excluded from the numerator and from the denominator of the property factor.

(ii) ~~Sales Factor~~Receipts factor: Receipts from Sales of telecommunications and ancillary services in this state.

**A.** Gross receipts from the sale of telecommunications services, other than those defined in subsections C. through G., which are sold on a call-by-call basis are in this state when (a) the call originates and terminates in this state or (b) the call either originates or terminates and the service address is also located in this state.

**B.** Gross receipts from the sale of telecommunications services, other than those defined in subsections C. through G., which are sold on other than a call- by-call basis, are in this state when the customer's place of primary use is in this state.

**C.** Gross receipts from the sale of mobile telecommunications services, other than air-to-ground radiotelephone service and prepaid calling service, are in this state when the customer's place of primary use is in this state pursuant to the Mobile Telecommunications Sourcing Act.

**D.** Gross receipts from the sale of pre-paid calling service, prepaid wireless calling service and post-paid calling service are in this state when the origination point of the telecommunications signal is first identified in this state by either (1) the seller's telecommunications system, or (2) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller..

**E.** Gross receipts from the sale of a private communication service are in this state:

1. if such service is for a separate charge related to a customer channel termination point, when the customer channel termination point is located in this state;
2. if under such service all customer termination points are located entirely within one state, when the customer channel termination points are located in this state;
3. if such service is for segments of a channel between two customer channel termination points located in different states and such segments of channel are separately charged, when one of the customer channel termination points is in this state, provided however that only fifty percent of such gross receipts shall be sourced to this state; and
4. if such service is for segments of a channel located in more than one state and such segments are not separately billed, when the customer channel termination points are in this state, provided however that only a percentage of such gross receipts, determined by dividing the number of

customer channel termination points in the state by the total number of customer channel termination points, are in this state.

**F.** A portion of the total gross receipts from sales of telecommunication services to other telecommunication service providers for resale is in this state in an amount determined by multiplying such total gross receipts by a fraction, the numerator of which is “total carrier’s carrier service revenues” for this state and the denominator of which is the sum of “total carrier’s carrier service revenues” for all states in which the taxpayer is doing business, as reported by the Federal Communications Commission [in its report titled Telecommunications Revenues by State, Table 15.6, or successor reports which include such information,] for the most recent year available as of the due date of the return, determined without regard to extensions.

**G.** Gross receipts attributable to the sale of an ancillary service are in this state when the customer’s place of primary use is in this state.

**H.** Gross receipts attributable to the sale of a telecommunication or ancillary service sold as part of a bundled transaction are in this state when such gross receipts would be this state in accordance with the provisions of sections ii.A. through G.

1. The amount of gross receipts attributable to the sale of a telecommunication or ancillary service which is sold as part of a bundled transaction shall be equal to the price charged by the taxpayer for such service when sold separately, adjusted by an amount equal to the quotient of a) the difference between 1) the price charged by the taxpayer for the bundled transaction, and 2) the sum of the prices charged by the taxpayer for each of the included products when sold separately, and b) the number of products included in the bundled transaction;

2. If the amount of such gross receipts is not determinable under subsection H.1., then it may be determined by reasonable and verifiable standards from taxpayer’s books and records that are kept in the regular course of business for purposes including, but not limited to, non-tax purposes.

**I.** Gross receipts from the sale of telecommunication services which are not taxable in the State to which they would be apportioned pursuant to sections ii.A through G., shall be excluded from the denominator of the ~~sales factor~~receipts factor.



••• **Reg.IV.18.(j). Special Rules: Publishing** [Adopted July 30, 1993]

The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material.

**(1) In General.** Except as specifically modified by this regulation, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of ~~business income~~apportionable income from sources within this state from such business activity shall be determined pursuant to [Article IV. of the Multistate Tax Compact and the regulations adopted thereunder].

**(2) Definitions.** The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

(i) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but which are not physically located in any particular state.

(ii) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

(iii) "Purchaser" and "Subscriber" mean the individual, residence, business or other outlet which is the ultimate or final recipient of the print or printed material. Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

(iv) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

**(3) Apportionment of ~~Business Income~~Apportionable income.**

**(i) The Property Factor.**

### **A. Property Factor Denominator.**

1. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

### **B. Property Factor Numerator.**

1. All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor.

2. Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio which the value of such property that is attributable to its use by the taxpayer in business activities in this state bears to the total value of such property that is attributable to its use in the taxpayer's business activities everywhere.

The value of outer-jurisdictional property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere.

Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outer-jurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

3. Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located in this state.

Example: One example of the use of outer-jurisdictional property is where the taxpayer either owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees in a state. The state or states in which any printing facility that receives the satellite communications is located and the state from which the communications were sent would, under this regulation, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of said satellite to its total usage everywhere.

Assume that ABC Newspaper Co. owns a total of \$400,000,000 of property everywhere and that, in addition, it owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at \$3,000,000. Assume also that the total original cost of the satellite is \$100,000,000 for the tax period and that of the 10,000 uplinks and downlinks of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, were determined to have an original cost of \$4,000,000 and such mobile property was used in this state for 95 days.

The total value of property to be attributed to this state would be determined as

follows: Value of property permanently in state:	\$3,000,000
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Value of mobile property:

95/365 or (.260274) x \$4,000,000:	\$1,041,096
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Value of leased satellite property used in-state:

(.02) x \$100,000,000:	<u>\$2,000,000</u>
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Total value of property attributable to state:	\$6,041,096
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Total property factor %: \$6,041,096/(\$500,000,000):	1.2082%
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**(ii) The Payroll Factor.**

The payroll factor shall be determined in accordance with Article IV.14. of the Multistate Tax Compact and the regulations promulgated thereunder.

**(iii) The ~~Sales Factor~~Receipts factor.**

**A. ~~Sales Factor~~Receipts factor Denominator.**

The denominator of the ~~sales factor~~receipts factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under Reg.IV.15 through 18.

**B. ~~Sales Factor~~Receipts factor Numerator.**

The numerator of the ~~sales factor~~receipts factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

1. Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.

2. Except as provided in subparagraph (3)(iii)B.3., gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor shall be determined for each individual publication by the taxpayer of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere.

The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

3. When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the [Tax Administrator] may require, that a portion of such receipts be attributed to the ~~sales factor~~receipts factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by subparagraph (3)(iii)B.2. Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to

purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

4. In the event that the purchaser or subscriber is the United States Government or that the taxpayer is not taxable in a State, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the ~~sales factor~~receipts factor for such State, shall be included in the numerator of the ~~sales factor~~receipts factor of this State if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this State.

••• **Reg.IV.18(h). Special Rules: Television and Radio Broadcasting**  
[Adopted August 31, 1990; amended April 25, 1996]

The following special rules are established in respect to the apportionment of income from television and radio broadcasting by a broadcaster that is taxable both in this state and in one or more other states.

(1) **In General.** When a person in the business of broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission or any other means of communication, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, has income from sources both within and without this state, the amount of ~~business income~~apportionable income from sources within this state shall be determined pursuant to Article IV. of the Multistate Tax Compact and the regulations issued thereunder by this state, except as modified by this regulation.

(2) ~~Business~~Apportionable and ~~Nonbusiness~~Incomeapportionable income. For definitions, regulations and examples for determining whether income shall be classified as "~~business~~"apportionable" or "~~nonbusiness~~"nonapportionable" income, see Reg. IV.1.

(3) **Definitions.** The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

(i) "Film" or "film programming" means any and all performances, events or productions telecast on television, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of video tape, disc or any other type of format or medium.

Each episode of a series of films produced for television shall constitute a separate "film" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

(ii) "Outer-jurisdictional" property means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of telecasting or broadcasting, but which are not physically located in any particular state.

(iii) "Radio" or "radio programming" means any and all performances, events or productions broadcast on radio, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of an audio tape, disc or any other format or medium. Each episode of a series of radio programming produced for radio broadcast shall constitute a separate "radio programming" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

(iv) "Release" or "in release" means the placing of film or radio programming into service. A film or radio program is placed into service when it is first broadcast to the primary audience for which the program was created. Thus, for example, a film is placed in service when it is first publicly telecast for entertainment, educational, commercial, artistic or other purpose. Each episode of a television or radio series is placed in service when it is first broadcast. A program is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for broadcast or, merely because it is previewed to prospective sponsors or purchasers.

(v) "Rent" shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.

(vi) A "subscriber" to a cable television system is the individual residence or other outlet which is the ultimate recipient of the transmission.

(vii) "Telecast" or "broadcast" (sometimes used interchangeably with respect to television) means the transmission of television or radio programming, respectively, by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers and listeners or by any other means of communications.

#### **(4) Apportionment of ~~Business~~ IncomeApportionable Income.**

(i) **In General.** The property factor shall be determined in accordance with Regulation IV.10 through 12., the payroll factor in accordance with Regulation IV.13. and 14., and the ~~sales factor~~receipts factor in accordance with Regulation IV.15. and 16., except as modified by this regulation.

#### **(ii) The Property Factor.**

##### **A. In General**

1. In the case of rented studios, the net annual rental rate shall include only the amount of the basic or flat rental charge by the studio for the use of a stage or other permanent equipment such as sound recording equipment and the like; except that additional equipment rented from other sources or from the studio not covered in the basic or flat rental charge and used for one week or longer (even though rented on a day-to-day basis) shall be included. Lump-sum net rental payments for a period which encompasses more than a single income year shall be assigned ratably over the rental period.

2. No value or cost attributable to any outerjurisdictional, film or radio programming property shall be included in the property factor at any time.

## **B. Property Factor Denominator.**

1. All real property and tangible personal property (other than outer-jurisdictional and film or radio programming property), whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

2. Audio or video cassettes, discs or similar medium containing film or radio programming and intended for sale or rental by the taxpayer for home viewing or listening shall be included in the property factor at their original cost. To the extent that the taxpayer licenses or otherwise permits others to manufacture or distribute such cassettes, discs or other medium containing film or radio programming for home viewing or listening, the value of said cassettes, discs or other medium shall include the license, royalty or other fees received by the taxpayer capitalized at a rate of eight times the gross receipts derived therefrom during the income year.

3. Outer-jurisdictional, film and radio programming property shall be excluded from the denominator of the property factor.

## **C. Property Factor Numerator.**

1. With the exception of outer-jurisdictional, film and radio programming property, all real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor as provided in Regulation IV.10.(d).

2. Outer-jurisdictional, film and radio programming property shall be excluded from the numerator of the property factor.

*Example:* XYZ Television Co. has a total value of all of its property everywhere of \$500,000,000, including a satellite valued at \$50,000,000 that was used to telecast programming into this state and \$150,000,000 in film property of which \$1,000,000's worth was located in this state the entire year. The total value of real and tangible personal property, other than film programming property, located in this state for the entire income year was valued at \$2,000,000; and the movable and mobile property described in subparagraph C.1. was determined to be of a value of \$4,000,000 and such movable and mobile property was used in this state for 100 days. The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state:	\$2,000,000
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Value of mobile and movable property: (100/365 or .2739 x \$4,000,000):	<u>\$1,095,600</u>
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Total value of property to be  
included in the state's property



factor numerator (outer-jurisdictional and film property excluded):	\$3,095,600
Total value of property to be used in the denominator (\$500,000,000-\$200,000,000)	\$300,000,000
Total property factor (\$3,095,600/\$300,000,000):	.0103

**(iii) The Payroll Factor.**

**A. Payroll Factor Denominator.**

The denominator of the payroll factor shall include all compensation, including residual and profit participation payments, paid to employees during the income year, including that paid to directors, actors, newscasters and other talent in their status as employees.

**B. Payroll Factor Numerator.**

Compensation for all employees shall be attributed to the state or states as may determined by the application of the provisions of Reg.IV.13. and 14.

**(iv) The ~~Sales Factor~~Receipts factor.**

**A. ~~Sales Factor~~Receipts factor Denominator.**

The denominator of the ~~sales factor~~receipts factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Reg.IV.18.(c).

**B. ~~Sales Factor~~Receipts factor Numerator.**

The numerator of the ~~sales factor~~receipts factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to the following:

1. Gross receipts, including advertising revenue, from television film or radio programming in release to or by television and radio stations located in this state.

2. Gross receipts, including advertising revenue, from television film or radio programming in release to or by a television station (independent or unaffiliated) or network of stations for broadcast shall be attributed to this state in the ratio (hereafter "audience factor") that the audience for such station (or owned and affiliated stations in the case of networks) located in this state bears to the total audience for such station (or owned and affiliated stations in the case of networks).

The audience factor for television or radio programming shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total viewing (listening) audience. Such audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics, provided the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer's activity in the state.

3. Gross receipts from film programming in release to or by a cable television system shall be attributed to this state in the ratio (hereafter "audience factor") that the subscribers for such cable television system located in this state bears to the total subscribers of such cable television system. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, such audience factor ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided that the source selected is consistently used from year to year for that purpose.

4. Receipts from the sale, rental, licensing or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening shall be included in the ~~sales factor~~receipts factor as provided in Reg. IV. 16.